

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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Elliot H. Brown

Plaintiff;

Case No. 24-cv-0449-bhl

v.

Officer Daniel Foy of the City of West Allis Police Department,  
Two Unknown Named Police Officers of the City of West Allis Police Department,  
Defendant(s);

Amended Complaint Under the Civil Rights Act, 42 U.S.C. § 1983

I. Place of Present Confinement

515 W. Moreland Blvd.

Waukesha, WI 53188

II. Parties

A.) Elliot H. Brown (Plaintiff)

B.) 554122 (DOC Number)

C.) 3451 (Last four of Social)

D.) 515 W. Moreland Blvd. (Current Address)

Waukesha, WI 53188

E.) Officer Daniel Foy of the City of West Allis Police Department,  
Individually and in his official capacity as an officer of the law,  
Badge # 144  
at 11301 W. Lincoln Ave.  
West Allis, WI 53227

F.) Additional Defendants (Name, Position, Place of Employment)  
Unknown Named Police Officer Y  
Police Officer at the City of West Allis Police Department  
at 11301 W. Lincoln Ave.  
West Allis, WI 53227

Unknown Named Police Officer Z  
Police Officer at the City of West Allis Police Department  
at 11301 W. Lincoln Ave.  
West Allis, WI 53227

### III. Previous Lawsuits

A.) Have you begun other lawsuits in state or federal court relating to the same facts involved in this action?

☐ Yes

☒ No

B.) Have you begun other lawsuits in state or federal court relating to your imprisonment?

☐ Yes

☒ No

#### IV. STATEMENT OF CLAIM

##### CLAIM 1 - ABUSE OF PROCESS & False Imprisonment

A.) On or about April 28<sup>th</sup> of 2021 Officer Dantel Foy and two unknown named police officers of the City of West Allis Police Department, whom will be eventually named, responded to a car accident involving a Scion XB. Officer Foy began to question the plaintiff and determined the plaintiff was disoriented and had been in an accident. Unknown Named Police Officers Y and Z arrived shortly after and although the plaintiff insisted he was not intoxicated and may have a concussion, they continued to believe the the plaintiff was on drugs. The fire department arrived and determined the plaintiff did not seem intoxicated and may have a concussion. Unknown Named Officers Y, Z, and Officer Foy had the plaintiff submit to a field sobriety exam. The three officers of the city of West Allis did improperly conduct the field sobriety exam for the purpose of artificially creating probable cause. The three officers of the City of West Allis Police Department did submit the plaintiff to a PBT test which resulted in a reading of 0.00 alcohol content. Officer Foy then submitted the plaintiff to a blood analysis, and prior to the results, without probable cause, charged and arrested the plaintiff, restraining him of his liberty, for the crime of Operating While Intoxicated Fifth Offense which he did not commit. The plaintiff was imprisoned falsely in Milwaukee County Jail until the month of September, 2021 when the case was dismissed in favor of the plaintiff. The three officers of the city of West Allis Police Department did so maliciously, in bad faith, and without probable cause by withholding evidence from the plaintiff. The resulting probation hold and criminal prosecution did falsely imprison the plaintiff until September of 2021 when the blood analysis results returned negative of any intoxicant

While falsely imprisoned and as a result of the defendants abuse of process the plaintiff suffered injuries to the head and face as he was battered by an inmate with a metal cane, he suffered grave mental and emotional distress, and monetary damages in the form of lost wages, loss of his career, and loss of an apartment.

B.) Officer Daniel Foy and two unknown named officers of the City of West Allis Police Department acted under state law to deprive the plaintiff of his Fourth and Fourteenth Amendment rights also guaranteed by the Wisconsin Constitution, Article I, § 1, 9, & 11. See Bivens v. Unknown Named Agents of Federal Bureau of Narcotics, 409 F.2d 718; Cook v. Sheldon, 41 F.3d 73. The plaintiff was falsely imprisoned in violation of Wis. Stat. § 940.30 and 42 USC § 1983.



## CLAIM 2 - MALICIOUS PROSECUTION

A.) On or about April 28<sup>th</sup> of 2021 Officer Daniel Foy and two unknown named officers of West Allis Police Department did, with malicious intent improperly conduct a field sobriety test on the plaintiff in order to artificially create probable cause and abuse their position as law enforcement officers to improperly commence criminal proceedings on the plaintiff. Officer Daniel Foy and Unknown Named Officers Y and Z did maliciously and without probable cause, charge the plaintiff with Operating While Intoxicated Fifth Offense despite the plaintiff completing the Field Sobriety Tests and PBT without error. The charge resulted in the plaintiff's arrest and false imprisonment in Milwaukee County Jail and judicial proceedings which terminated in September of 2021 in favor of the plaintiff. The defendant charge resulted in false allegations in the plaintiff's subsequent probation revocation hearing which also terminated in September of 2021 in the favor of the plaintiff. The plaintiff was injured physically, by another inmate during his imprisonment as a direct result of the malicious prosecution by Officer Daniel Foy and two unknown named officers of West Allis Police Department. The plaintiff did suffer financial hardship as a result of losing his job, his apartment, being disreputed in the community, and not being able to work during the period of his confinement. The plaintiff was damaged physically, emotionally, mentally, and financially as a result, of the response of Daniel Foy and the two unknown named officers (Y & Z) who responded to the plaintiff's car accident.

B.) The responding officers; Daniel Foy and two unnamed officers of the City of West Allis Police Department subjected the plaintiff to an unlawful, illegal, and excessive detention in violation of his Fourth Amendment rights as a consequence of a maliciously initiated judicial proceeding. They acted

Under the color of law and in violation of 42 U.S.C.S. §1983 and 18 U.S.C.S 242. See Elmer v. Chicago & N.W.R. Co, 257 Wis 228; Lewis v. Meloni, 949 F. Supp 158

### CLAIM 3 - DEFAMATION

A.) Officer Daniel Foy and two unknown named officers of the City of West Allis Police Department, on or about April 28<sup>th</sup> of 2021 did falsely arrest, charge and imprison the plaintiff with Operating While Intoxicated Fifth Offense and in doing so they signed and submitted reports and affidavits available publicly at the county and municipal levels. As the vehicle which was involved in the reports was a business owned vehicle, this false charge subjected the plaintiff unnecessarily and maliciously to hatred, contempt, ridicule, and disgrace in society and in the business or occupation of the plaintiff. Records of the false charge were published on the Wisconsin Circuit Court online database (CCAP) and were publicly available for many months. As a result the plaintiff lost his job, was defamed in the community, suffered mental and emotional distress, a loss of wages, wage increases, benefits from employment, and was forced to change careers because of his inability to get and keep a job in his previous field.

B.) Officer Daniel Foy and two unknown named officers of the City of West Allis Police Department acted under color of law in violation of Wis. Stat. §942.01 (2) and contrary to the plaintiff's Fourteenth Amendment rights to be free of deprivations of life, liberty, and property. They acted individually and in their capacities as police officers, guilty of violating 42 U.S.C.S. §1983. See Van Staden v. Milwaukee Journal Newspaper Publisher 151 Wis. 2d 905, 912, 447 N.W.2d 105, 108 (Ct. App 1989)



## V. RELIEF YOU REQUEST

The plaintiff demands the following relief jointly and severally against all the defendants:

### A) COMPENSATORY DAMAGES

- 1.) Actual lost wages during the period of confinement and for time spent finding new employment after his release from custody amounting to \$40,000.00.
- 2.) The costs amounting to \$5,000.00 incurred due to defaulting on a lease agreement, losing his apartment and all the furniture inside it.
- 3.) Applicable court adjusted compensation for legal fees associated with the malicious prosecution, the abuse of process, and the filing of this case to recover damages.

### B.) PUNATIVE DAMAGES

Due to the immense mental anguish of being disreputed in the community in which he has grown up in, forced into confinement under false pretenses, from enduring physical punishment, emotional trauma from the experience as well as ridicule, the pain and suffering of having been physically and emotionally abused at the fault of another, and the loss of liberty, opportunity, and standing with my family as well as the community the plaintiff demands \$100,000 so that he may recover and that the people and organizations responsible may be duly punished.

C.) To prevent and deter such future unlawful conduct, I, Elliot H Brown do request State and Local Police policy to be affected in that charges are not inflicted and published until positive test results are determined in cases where a PBT field sobriety test is negative.

I declare under penalty of perjury that the following is true and correct.

NAME: Elliot H Brown

SIGNED: *Elliot Brown*

DATE: 05/29/24

ADDRESS: 515 W. Moreland Blvd.  
Waukesha, WI 53188

Signed before me on 5/29/24

*Jonathan Westberg*  
Waukesha County

Expires 10/15/26

**JONATHAN WESTBERG**  
Notary Public  
State of Wisconsin